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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

DANIEL MORRIS,	)	Case No.
	)	
Plaintiff,	)	<b>PLAINTIFF'S COMPLAINT FOR</b>
	)	<b>DAMAGES</b>
v.	)	<b>(Unlawful Debt Collection Practices)</b>
CAPITAL ONE BANK (USA), N.A.	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**COMPLAINT**

DANIEL MORRIS ("Plaintiff"), by his attorneys, alleges the following against  
CAPITAL ONE BANK (USA), N.A. ("Defendant"):

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

2. Defendant conducts business in the state of Missouri, and therefore, personal jurisdiction is established.
3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

- 1 4. Venue is proper in the United States District Court for the Western District of Missouri  
2 pursuant to 28 U.S.C. § 1391(b) because Plaintiff resides within this District and a  
3 substantial part of the events or omissions giving rise to the herein claims occurred, or a  
4 substantial part of property that is the subject of the action is situated within this District.

5 **PARTIES**

- 6 5. Plaintiff is a natural person residing in the county of Boone, in the city of Centralia,  
7 Missouri.  
8 6. Defendant is a Virginia corporation doing business in the Missouri and has its principal  
9 place of business in McLean, Virginia.  
10 7. At all times relevant to this Complaint, Defendant has acted through its agents,  
11 employees, officers, members, directors, heir, successors, assigns, principals, trustees,  
12 sureties, subrogees, representatives and insurers.

13 **FACTUAL ALLEGATIONS**

- 14 8. Defendant is a “person” as defined by 47 U.S.C. § 153(39).  
15 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged  
16 debts owed by Plaintiff.  
17 10. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (573)  
18 982-95XX.  
19 11. Defendant placed collection calls to Plaintiff from phone numbers including, but not  
20 limited to, (800) 365-2024.  
21 12. Per its prior business practices, Defendant’s calls were placed with an automated  
22 telephone dialing system (“auto-dialer”).  
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1 13. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. §  
2 227(a)(1) to place its telephone calls to Plaintiff seeking to collect a consumer debt  
3 allegedly owed by Plaintiff, DANIEL MORRIS.

4 14. Defendant’s calls constituted calls that were not for emergency purposes as defined by  
5 47 U.S.C. § 227(b)(1)(A).

6 15. Defendant’s calls were placed to a telephone number assigned to a cellular telephone  
7 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §  
8 227(b)(1).

9 16. Defendant never received Plaintiff’s “prior express consent” to receive calls using an  
10 automatic telephone dialing system or an artificial or prerecorded voice on his cellular  
11 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

12 17. On March 6, 2018, at or around 2:39 p.m. Pacific Standard Time, Plaintiff spoke with  
13 Defendant’s male representative at (800) 365-2024 and requested that Defendant cease  
14 calling Plaintiff’s cellular phone.

15 18. During the conversation, Plaintiff gave his name, social security number, and date of  
16 birth to assist Defendant’s representative in accessing his account before asking  
17 Defendant to stop calling his cell phone.

18 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular  
19 telephone and/or to receive Defendant’s calls using an automatic telephone dialing  
20 system in his conversation with Defendant’s representative on March 6, 2018.

21 20. Despite Plaintiff’s request to cease, Defendant continued to place collection calls to  
22 Plaintiff through August 31, 2018.  
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1 21. Despite Plaintiff's repeated request that Defendant cease placing automated collection  
2 calls, Defendant placed at least One Hundred and Twenty-three (123) automated calls to  
3 Plaintiff's cell phone.

4 **FIRST CAUSE OF ACTION**  
5 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**  
6 **47 U.S.C. § 227**

7 22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set  
8 forth above at Paragraphs 1-21.

9 23. The foregoing acts and omissions of Defendant constitute numerous and multiple  
10 negligent violations of the TCPA, including but not limited to each and every one of the  
11 above cited provisions of 47 U.S.C. § 227 et seq.

12 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is  
13 entitled to an award of \$500.00 in statutory damages, for each and every violation,  
14 pursuant to 47 U.S.C. §227(b)(3)(B).

15 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

16  
17 **SECOND CAUSE OF ACTION**  
18 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**  
19 **PROTECTION ACT**  
20 **47 U.S.C. § 227 et. seq.**

21 26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set  
22 forth above at Paragraphs 1-21.

23 27. The foregoing acts and omissions of Defendant constitute numerous and multiple  
24 knowing and/or willful violations of the TCPA, including but not limited to each and  
25 every one of the above cited provisions of 47 U.S.C. § 227 et seq.

1 28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,  
2 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every  
3 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

4 29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, DANIEL MORRIS, respectfully requests judgment be entered  
7 against Defendant, CAPITAL ONE BANK (USA), N.A., for the following:

8 **FIRST CAUSE OF ACTION**

9 30. For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged  
10 herein (123), \$61,500.00;

11 31. Actual damages and compensatory damages according to proof at time of trial;

12 **SECOND CAUSE OF ACTION**

13 32. For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged  
14 herein (123), \$184,500.00;

15 33. Actual damages and compensatory damages according to proof at time of trial;

16 **ON ALL CAUSES OF ACTION**

17 34. Costs and reasonable attorneys' fees;

18 35. Any other relief that this Honorable Court deems appropriate.

19 **JURY TRIAL DEMAND**

20 36. Plaintiff demands a jury trial on all issues so triable.

21  
22 RESPECTFULLY SUBMITTED,

23 Dated: October 8, 2018

24 /s/ Gary Eastman  
25 Gary Eastman  
The Eastman Law Firm  
4901 W. 126<sup>th</sup> St., Suite 240  
Leawood, KS 66224

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*Attorney for Plaintiff*

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